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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ASTORINO, MICHAEL C

ART UNIT

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3769

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/719,408	Applicant(s) COSENTINO ET AL.	
	Examiner Michael C. Astorino	Art Unit 3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90-102, 105-115, 117 and 118 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 90-102, 105-115, 117 and 118 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/08, 10/09</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Examiner acknowledges the response filed August 10, 2009, wherein claims 90-102, 105-115, and 117-118 are pending.

Election/Restrictions

Claim 95 amended on June 20, 2008 was previously overlooked by the examiner and not properly examined. Otherwise stated the examiner did not recognize that an infusion device was claimed. As such claim 95 was never properly addressed by the examiner.

Claim 95, amended on June 20, 2008, is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: infusion devices are directed to a distinct species. The originally elected species is directed to a Species I: the support member. See Office action mailed November 17, 2004.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 95 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

Claims 90, 105, 115, 117, and 118 are objected to because of the following informalities.

First, “generating” should be changed to “generates” to avoid gerunds in apparatus type claims in claim 90, line 6; claim 117, line 6; and claim 118, line 6.

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Second, claim 90, in the second to last line, in claim 105, in lines 20 and 23, and claim 118 in the second to last line Applicant refers to “the symptoms”. It is believed that “the symptoms” refer to perceived symptoms as opposed to symptom data. If so, the examiner suggests amending the claims to replace "the symptoms" with "the perceived symptoms".

Third, the last limitation of claim 105, should be amended in the following manner “issuing ~~the~~ an exception when it is determined that the symptoms indicate a deterioration of the patient's previously diagnosed condition.”

Fourth, Applicant should amend claim 115 to replace “points” with “score value”. Additionally claim 115 is objected to because the limitation in claim 115 may be encompassed by the last two limitations in claim 105, and may not further limit the claimed invention.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 90, 92-94, 96-97, 100-102, 105-111, 113-115, and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown by US Patent Number 5,997,476 in view of Lloyd et al. US Patent Number 6,080,106 (hereinafter Lloyd).

In regards to claim 90, Brown teaches transmitting inputted data from chronically ill patients to a remote office, *see figure 1, abstract, and column 1, lines 28-42*. The inputted data

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includes physiological sensor data including from a scale and from answered questions regarding questions arranged to establish whether the patient is perceiving symptoms, *see column 5, lines 3-13*. Brown's remote monitoring apparatus includes a transducing device 28, microprocessor 76, communication device 86, a display 64, and input buttons 70, *see figure 4*. The display asks questions to a patient having four choices, for example very bad, bad, good, and very good, *see figure 5*. The patient's answers and sensed physiological data is sent either wired or wirelessly to a server where the information can be viewed through a workstation by a healthcare professional, *see abstract, and figure 10*. Figure 10 displays the answers to the four questions to a doctor, and as such the doctor will use the "totality" of the information to make a determination regarding the patient's previously diagnosed condition.

Brown does use words instead of numbers as the answers. However, Lloyd et al. a reference in an analogous art teaches the uses numbers instead of words for answers to questions, *see column 4, lines 42-43*. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute numerical answers in Lloyd et al. for the answers in Brown, since having numbers representing levels instead of words is well known in the medical art.

As such Brown and Lloyd teach asking multiple questions and receiving numerical answers and a medical professional reviewing all the information. However Brown and Lloyd in combination do not teach, a processing computer using a total of the predetermined numerical score values of two or more of the answers. Nonetheless, "[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or

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her grasp. If this leads to the anticipated success, it is likely the product is not of innovation but ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show it was obvious under 35 U.S.C. 103.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, (2007). As such it is the Examiner’s position that it would have been obvious to try to add points together instead of just compiling numbered answers for display to a healthcare professional.

Regarding claim 92, Brown teaches the use of a modem, *see figure 4 modem 86*.

Regarding claim 93, Brown teaches the use of a RS-232 port, *see column 6, lines 35-50*.

Regarding claim 94, Brown teaches the use of the Internet, *see abstract and column 4, lines 36-63*.

In regards to claim 96, modified Brown disclose numerous wired and wireless communication devices (column 6, lines 8-10) but does not disclose satellite or infrared communication devices. Official Notice is taken, that it is well known to one of ordinary skill in the art at the time of the invention was made that a satellite or infrared communication device is equivalent to the communication devices disclosed in modified Brown and the selection of any one the non-disclosed devices would have been an obvious substitution. Furthermore, the applicant has not disclosed that having a satellite or infrared communication device solves any stated problem or is for any particular purpose, it appears that the communication devices of modified Brown would perform equally well with a satellite or infrared communication device or the communication devices of modified Brown.

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In regards to claim 97, Brown teaches the use of cellular communication which is a form of a RF transceiver, *see column 4, lines 36-63. See also Lloyd column 6, lines 6-10 that an RF transceiver is a known substitutable transceiver.*

In regards to claim 100, Brown teaches the use of bidirectional communication from a patient to a healthcare provider. A healthcare provider is equivalent to a nurse.

In regards to claim 101, Brown teaches the use of an audio processor for speech recognition, *see audio processor 120 in figure 15.*

In regards to claim 102, Brown teaches a display, *see figure 4 display 64.*

In regards to claims 105 and 115, the rejection is substantially similar to claim 90 above with the exception of the last limitation of claim 105, “issuing ~~the~~ [an] exception when it is determined that the symptoms indicate a deterioration of the patient's previously diagnosed condition.” It is obvious to one of ordinary skill in the art at the time of the invention if a deterioration of a patient’s chronic condition occurs a healthcare provider would inform the patient.

Regarding claim 106, Brown teaches the use of a modem, *see figure 4 modem 86.*

Regarding claim 107, Brown teaches the use of a RS-232 port, *see column 6, lines 35-50.*

Regarding claim 108, Brown teaches the use of the Internet, *see abstract and column 4, lines 36-63.*

In regards to claims 109 and 110, modified Brown disclose numerous wired and wireless communication devices (column 6, lines 8-10) but does not disclose satellite or infrared communication devices. Official Notice is taken, that it is well known to one of ordinary skill in the art at the time of the invention was made that a satellite or infrared communication device is

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equivalent to the communication devices disclosed in modified Brown and the selection of any one the non-disclosed devices would have been an obvious substitution. Furthermore, the applicant has not disclosed that having a satellite or infrared communication device solves any stated problem or is for any particular purpose, it appears that the communication devices of modified Brown would perform equally well with a satellite or infrared communication device or the communication devices of modified Brown.

In regards to claim 111, Brown teaches the use of cellular communication which is a form of a RF transceiver, *see column 4, lines 36-63. See also Lloyd column 6, lines 6-10 that an RF transceiver is a known substitutable transceiver.*

In regards to claim 113, Brown teaches the use of an audio processor for speech recognition, *see audio processor 120 in figure 15.*

In regards to claim 114, Brown teaches a display, *see figure 4 display 64.*

Claims 117 is rejected on substantially the same basis as claim 90.

Claims 91 and 118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown by US Patent Number 5,997,476 in view of Lloyd et al. US Patent Number 6,080,106 (hereinafter Lloyd) as applied to claim 90 above, and further in view of Melton, Jr. US Patent Number 6,038,465 A.

Regarding claims 91 and the structural limitations of claim 118 directed to the scale (i.e. base, support member, and housing), Brown states the physiological sensor can be a weight scale but does not give specific details as to the structure of the weight scale. However Lloyd et al. illustrates the specifics of a weight scale as claimed, *see figure 1*. It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to substitute the weight scale of Lloyd et al. in view of weight scale of Brown, since structure of a weight scale is well known in the medical art.

More specifically Lloyd teaches a base (10), the base including the transducing device and a housing (30), the housing including the processor, the communication device, the input device, and the output device, but does not disclose a support member extending between the base and the housing. However Melton, Jr. a reference in an analogous art discloses a support member (24, figure 1) extending between the base and the housing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify system of Lloyd in view of the support member of Melton, Jr., since Melton, Jr. states in column 4, lines 26-47 the frame is used to provide support for the user.

The remainder of the limitations of claim 118 is rejected on substantially the same basis as claim 90.

Claims 98-99 and 112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown by US Patent Number 5,997,476 in view of Lloyd et al. US Patent Number 6,080,106 (hereinafter Lloyd) and further in view of Drinan et al 6,354,996 B1.

In regards to claims 98-99 and 112, modified Brown, more specifically Lloyd, does not disclose a second portion having a wall mount. However, Drinan et al. a reference in an analogous art discloses a second portion with a wall mount (figure 1B, 4A and 4B). It would have been obvious to one in the art at the time of the invention to combine the second portion with a wall mount of Drinan et al. with the remote monitoring system of modified Brown, more

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specifically Lloyd, as an equivalent means to comfortably view display information to a user at eye level.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

For the record the rejection under 35 U.S.C. 112 first paragraph has been withdrawn based on the applicant's remarks.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is (571)272-4723. The examiner can normally be reached on Monday-Friday, 10:30AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

December 7, 2009